

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, The Curtis Center, 170 South Independence Mall West—Suite 740 West, Philadelphia, Pennsylvania

Office of the Commissioner, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219.

[65 FR 36630, June 9, 2000]

#### § 1952.377 Changes to approved plans.

In accordance with part 1953 of this chapter, the following Virginia plan changes were approved by the Assistant Secretary:

(a) The State submitted legislative amendments related to the issuance and judicial review of administrative search warrants which became effective on July 1, 1987. The Assistant Secretary approved these amendments on 14 September, 1987.

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Virginia's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

[52 FR 35070, Sept. 17, 1987, as amended at 59 FR 14556, Mar. 29, 1994]

### Subpart FF—Puerto Rico

#### § 1952.380 Description of the plan.

(a) The plan designates the Puerto Rico Department of Labor and Human Resources as the agency responsible for the administration and enforcement of the plan throughout the Commonwealth. This includes the responsibility for administration of a public employee program for which the same enforcement provisions and procedures used for the private sector will apply, with the exception of penalties. Penalties in the Commonwealth's Act for the private sector are essentially identical to those in the Federal Act, and Puerto Rico intends to adopt all Federal standards. The Commonwealth will exclude from coverage all industries included within the classifications of Marine Cargo Handling (SIC 4463) and Shipbuilding and Repairing (SIC 3713), but will adopt and enforce standards for boilers and elevators and

other issues where no Federal OSHA standards exist. The plan provides that program personnel will be employed under a merit system and provides for a Management Information System. It also provides procedures for the development and promulgation of standards and procedures for the prompt restraint or elimination of imminent danger situations.

(b) The Puerto Rico Occupational Safety and Health Act was enacted on July 7, 1975, and approved by the Governor on August 5, 1975. It is similar in most respect to the Federal Act. The Puerto Rico Act provides employers the right of administrative review of citations, abatement requirements, and proposed penalties, and employee review of abatement dates, by a hearing examiner appointed by the Puerto Rico Secretary of Labor. The decision by the Secretary may be appealed by the employer or employees to the civil courts. The plan contains a statement of support by the Governor and an opinion by the Secretary of Justice that the Act is consistent with the State's Law and Constitution. Federal procedural regulations will be incorporated into the Commonwealth's regulations and the Federal Compliance Manual will be adopted to fit Puerto Rico's Law. In addition, the Puerto Rico Act requires that a Spanish language version of OSHA standards be made available within three years of plan approval.

(c) The Puerto Rico Act provides for, among other things, inspections in response to employee complaints; an opportunity for employer and employee representatives to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of a complaint; notification of employees of their protections and obligations; protection for employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; sanctions against employers for violations of standards and orders; and review of citations by a hearing examiner, with appeal to the Secretary of Labor and the Commonwealth's courts.

(d) The plan also proposes a program of voluntary compliance by employers

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and employees, including a provision for on-site consultation.

(e) The Puerto Rico Plan includes the following documents as of the date of approval:

(1) The plan description documents, in two volumes.

(2) A copy of the enabling legislation as enacted on July 7, 1975, and signed by the Governor on August 5, 1975.

(3) An assurance of separability of the enforcement personnel from the hearing examiner.

(4) A letter of assurance of the authenticity of the English version of the Puerto Rico OSHA Act from John Cinque Sacarello, Assistant Secretary for Occupational Safety and Health, Puerto Rico Department of Labor, dated December 4, 1975.

[42 FR 43629, Aug. 30, 1977]

### § 1952.381 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;

Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 201 Varick Street, Room 670, New York, New York 10014.

Office of the Secretary, Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Building, 505 Munoz Rivera Avenue, Hato Rey, Puerto Rico 00918.

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### § 1952.382 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Puerto Rico, effective December 8, 1981, and based on a determination that Puerto Rico is operational in the issues covered by the Puerto Rico occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910 and 1926 except

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as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c)); safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules of orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Puerto Rico plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). Federal OSHA will also retain authority for coverage of Federal employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. The OSHA Regional Administrator will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Puerto Rico.

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